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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWN DAMON BARTH,

Defendant and Appellant.

2d Crim. No. B234483
(Super. Ct. No. 2008038441)
(Ventura County)

Shawn Damon Barth appeals the judgment entered after he pled guilty to aggravated sexual assault of a child under the age of 14 (Pen. Code,¹ § 269, subd. (a)(1)) and continuous sexual abuse of a child (§ 288.5, subd. (a)), and admitted that each count involved substantial sexual conduct (§ 1203.066, subd. (a)(8)). The trial court sentenced him to 15 years to life in state prison on the aggravated sexual assault count, plus a concurrent 12-year term on the count for continuous sexual abuse of a child. In addition to various fines and fees, appellant was ordered to pay \$100,000 in direct victim restitution pursuant to section 1202.4, subdivision (f)(3)(F), and an additional amount to be paid to the Victim Compensation Board by further order of the court.

Because appellant pled guilty prior to trial, the relevant facts are derived from the preliminary hearing transcript and probation report. In January 2007, the victim

¹ All further undesignated statutory references are to the Penal Code.

(who was then 12 years old) and her mother began living with appellant at his residence in Yucaipa. Between March and September of that year, appellant repeatedly engaged in sexual intercourse and other sexual acts with the victim. In September, the victim's mother reported the crimes to the San Bernardino Sheriff's Department. When deputies tried to contact appellant about a restraining order that had been placed against him with regard to the victim, they discovered that he had moved. Appellant's sexual abuse of the victim continued after the victim and her mother moved into appellant's new residence in Moorpark. In September 2008, the victim's school counselor contacted law enforcement and child protective services after discovering there was a restraining order against appellant. The victim was taken into protective custody and appellant was arrested.

We appointed counsel to represent appellant in this appeal. After examining the record, counsel filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. Appellant responded with a lengthy letter in which he contends (1) the detectives who came to the interview room where he was taken after his arrest failed to give the *Miranda*² warning and physically assaulted him by, among other things, "us[ing] tweezers to remove hairs from [his] body"; (2) his trial counsel failed to request a change of venue due to unfavorable pretrial publicity; (3) his trial should have been held in San Bernardino County; (4) the three attorneys who represented him at different points throughout the course of the proceedings "treated [him] with disrespect and intolerance" and provided ineffective assistance of counsel by, among other things, failing to interview potential witnesses and seek production of 911 calls that "would show [a] record of violence and threats by the witnesses against [him]"; (5) he was subjected to physical and emotional abuse while in jail that was "so retaliatory it caused [him] to attempt suicide"; (6) the victim's interview with the police was "tainted" because she was "interrogated" by the

² (*Miranda v. Arizona* (1966) 384 U.S. 436.)

police "without an advocate or a parent present"; (7) an unspecified and apparently exculpatory "piece of evidence [that] was hand delivered" to his attorney's office was either lost or intentionally withheld;(8) he was denied his speedy trial rights; (9) the court erred in denying his request for self-representation; (10) his attorney induced him to plead guilty by telling him he had the right to appeal the victim restitution order; (11) the victim restitution order "is unconscionable and cruel"; (12) at sentencing, the trial judge violated "[a]n agreement . . . made during the Motions Hearing that the victim's past record and [appellant's] past record were not to be discussed" (13) he did not commit the crimes to which he pled guilty; (14) his attorney wrongfully refused to file a motion for the return of personal property that was purportedly "taken into evidence"; and, finally, (15) the collective weight of the many injustices visited upon him "pushed" him to accept the prosecutor's deal.

Appellant has not identified any arguable issues for our review. With regard to the first claim, the probation report demonstrates that appellant was not only given the *Miranda* warning when the detectives attempted to interview him after his arrest, but also that the interview was suspended after appellant invoked his right to counsel. Appellant's claim that the detectives physically abused him in order to coerce a confession that he never made provides no conceivable basis for a reversal of his conviction, nor does his claim that he was mistreated while in jail. His claim that counsel had a duty to move for the return of unspecified personal property is similarly unavailing. Appellant's claim that the restitution order "is unconscionable and cruel" is premised on the assertion that it will be difficult if not impossible to pay. The defendant's ability to pay, however, is not a consideration in determining the amount of the restitution order. (§ 1202.4, subd. (g).) Moreover, even if appellant could establish that victim restitution is a "fine" or punishment subject to constitutional provisions against excessive fines (see *People v. Harvest* (2000) 84 Cal.App.4th 641, 650 ["victim restitution is a civil remedy and not a criminal penalty" and "does not constitute punishment for double jeopardy purposes"]), the crimes he committed against his victim justify the amount of the award.

As for appellant's complaint that the court discussed his "past record"

during sentencing, it is clear that the parties merely agreed to refrain from referring to his record *at trial*. Appellant's criminal history was, of course, a relevant factor to be considered in determining the appropriate sentence. (Cal. Rules of Court, rule 4.421(b).) Appellant's remaining claims essentially challenge the validity of his plea and thus cannot be raised without a certificate of probable cause. (§ 1237.5; Cal. Rules of Court, rule 8.304(b); *People v. Placencia* (2011) 194 Cal.App.4th 489, 493.)

We have reviewed the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 124; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

The appeal is dismissed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Brian J. Back, Judge
Superior Court County of Ventura

Mark R. Feeser, under appointment by the Court of Appeal; Shawn D.
Barth, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.